

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS

Call to Order: By **CHAIRMAN DANIEL FUCHS**, on February 17, 2001 at 1 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Daniel Fuchs, Chairman (R)
Rep. Joe Balyeat, Vice Chairman (R)
Rep. George Golie, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Debby Barrett (R)
Rep. Paul Clark (D)
Rep. Ronald Devlin (R)
Rep. Tom Facey (D)
Rep. Nancy Fritz (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Larry Jent (D)
Rep. Jeff Laszloffy (R)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Allen Rome (R)
Rep. Jim Shockley (R)
Rep. Donald Steinbeisser (R)
Rep. Bill Thomas (R)
Rep. Brett Tramelli (D)

Members Excused: None.

Members Absent: None.

Staff Present: Linda Keim, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 569, 2/15/2001
Executive Action: HB 492; HB 264; HB 492; HB 388; HB 520; HB 569; HB 481

HEARING ON HB 569

Sponsor: REPRESENTATIVE JOHN ESP, HD 25, BIG TIMBER

Proponents: Justin O'Hair, Chimney Rock Outfitters, Livingston
P. K. Williams, Belt Creek Outfitters, Geyser
Shane Erickson, God's Country Outfitters, Lincoln

Opponents: None

Informational Witnesses: Jean Johnson, Montana Outfitters &
Guides Association

Opening Statement by Sponsor:

REP. JOHN ESP, HD 25, BIG TIMBER said HB 569 corrects part of SB 334 which was passed by the last legislature. It had a negative effect on young families and families that were trying to start a business. It limited the amount of time that outfitters had to use or lose the net client hunting use (NCHU) privilege that they were granted with their license application. HB 569 is proposing that any new outfitter granted a license will have five seasons within which to build up his business from nothing to whatever the cap is on the number of hunters established by the state.

Proponents' Testimony:

Justin O'Hair, Outfitter from Livingston, said he worked with REP. ESP in writing this Bill because SB 334 gave him only two years to build a business from nothing. There aren't many businesses anywhere that can start out with nothing and come to their maximum potential in two years. HB 569 will also give outfitters who are trying to build a business the opportunity to manage wildlife through drought, fire, and extreme years when game is down. If they were working hard in a shorter time, they would not have a fair chance to conservatively manage their game. When SB 334 was drafted, it was done fairly quickly, and a lot of people did not realize what the outcome would be.

P. K. Williams, Outfitter from Geyser, said they bought Robert Miller's Outfitting business out of Great Falls several years ago. When they looked at the business it had adequate NCHU with the business, so that would give them time to build the business. Mr. Miller sold the business because he had cancer, he put in for an expansion for NCHU in February 1996. In June 1996, he was diagnosed with cancer, so in the fall of 1996 he had to have his hunters go with other outfitters. In 1997, he was still receiving treatment for cancer, and they bought the business in October 1997. There were no bookings then, due to Mr. Miller's

health condition. Their three years with SB 334, were retroactive to 1997, 1998, and 1999. It was too late to pick up any hunters in 1997. They didn't have a ranch leased in 1998 and 1999, but found one last summer that had good hunting on it and leased it. Then he found out about SB 334 which had been passed in April 1999 and they went before the Board of Outfitters and found that not having used their NCHU's which were for 1997, 1998 and 1999, they would lose everything Mr. Miller had put in for. When they bought the business, they also got a loan from a bank. So they paid for those NCHU's and are still paying for those NCHU's, which they may or may not have. His point is, with SB 334, it takes time to build up a business, whether it is a new outfitter or an established one. Any business takes 5-7 years or more to get going. Proper advertising, whether outfitting or a hardware store, all takes time. Another problem with SB 334 is where it limits an outfitters opportunity and his time to get his business built up. Another example would be going to a barbershop. If they said to go back 1997, 98, 99 and know the most number of heads you have cut in a given year. If they say, 200, then that is all you can cut. It is the same thing, in restricting a business. There are approximately 108 outfitters affected by this, so it is not a small number that are affected by this Bill. There are many reasons why the NCHU numbers are down. One reason is the amount of game; bird numbers are down, so outfitters didn't book as many clients. Elk outfitters didn't book as many elk hunters because elk numbers were down in their area. Here they thought they were doing something as a conservationist, when in actuality, they found they would be penalized for it in the long run.

Shane Erickson, Outfitter from Lincoln, said he was licensed in January 1996, a few months before this came about. With no past history of years in business to go by, he was granted a NCHU of zero. He was forced to put in for an expansion. At the same time, this NCHU caused a panic throughout the industry. Every outfitter was going to go out and try to boost their client numbers up for their future use, whether it was to increase the value for re-sale or whatever the reason might be. Even five years in this business isn't long enough time to get enough clients to make a living at it. Operating on private land, they do pay a substantial amount of money as opposed to operating in the forest service or a wilderness area. So far he served 29 in one year; but somehow thru the paperwork, he got knocked down to 28. He feels he is in a position where he may have to create a lawsuit over this if it isn't cleared up. There should have been something in SB 334 for newly licensed outfitters. They are just asking for some help to set this right and make it even.

Opponents' Testimony: None

Informational Witnesses:

Jean Johnson, Montana Outfitters and Guides Association, said in 1987 outfitters asked for and received a set aside pool of licenses for their clients because they could not do business in the lottery system. In 1993, SB 169 sought to eliminate that set aside concept. Went through the Private Lands Public Wildlife Advisory Council for 18 months and made certain agreements. Unfortunately, what that Council sought to do and needed to do was to put the private land outfitter in a box, because there was no way they could tell the landowner he could not lease to outfitters. The new outfitter had no recourse but to get expansions to create NCHU. There was a misunderstanding of what Net Client Hunting Use really is. Has figures that say there are over 6,000 NCHU for guaranteed elk, but that doesn't count every outfitter who operates on forest service land, because they aren't bound by NCHU. We only sell 5500 of those licenses, so clearly NCHU is not what the public thought it would be. I136, the Sportsman's Initiative, came in 1998. When the ballot issue was over, the Private Land Council reacted quickly to the fact that outfitters won, because they didn't think it would happen, and they put together something to answer the charge of I136. After spending nine months with Rep. Molnar, Jean Johnson said she overreacted about NCHU increases, and said three years, use it or lose it. It was good intentioned, but it was a mistake because it had no practicality. They have been working with **REP. ESP** to find a compromise that would serve their needs and wouldn't upset the Wildlife Federation. This Bill has done that. However, when they brought the issue up to the MOGA Board, there are too many old warhorses on the Board that have come through those 20 years of trauma, and they said we cannot be the lead on this Bill. That is why she is here as an Informational Witness. This Bill needs to be passed; these people need some fairness. But that is up to you and to them.

Questions from Committee Members and Responses:

REP. CLARK asked if anything like this had come through the Private Lands Public Wildlife Advisory Council (PLPWAC). Is there a reason for that? **Henry Warsech, Montana Board of Outfitters** said he was not aware that it was submitted to the PLPWAC. **REP. CLARK** asked how this would work; now that there are guaranteed outfitter sponsored licenses? If you have new outfitters getting new clients, how would that fit into the current distribution of the guaranteed outfitter sponsored licenses? **Henry Warsech**, said they would be treated as a new license, they would have to gain NCHU through the system, through criteria in Sections 317-318. **REP. CLARK** asked if they would qualify for guaranteed outfitter sponsored licenses? Isn't there

a limited number of guaranteed outfitter sponsored licenses?

Henry Warsech said there is a limited number of guaranteed outfitter sponsored licenses. What the NCHU does is give the authorization to get those licenses. It still would be on the open market as far as who gets them. **REP. CLARK** said if there is a limited number of licenses, are all those licenses being used today, and if new outfitters get some of those licenses, will older outfitters lose some of those licenses? **Henry Warsech** said that is correct. What you currently have is the authority to gain a certain number of NCHU per category, and there is more NCHU than there are licenses. If you add outfitters, the bottom line is that only a certain number of licenses are going to be sold, and that is what dictates how many hunters you have. **REP. CLARK** asked if there is a reason why outfitters that have established use and get a certain number of guaranteed outfitter sponsored licenses aren't here opposing this, since they may lose some of their guaranteed licenses? **Henry Warsech** said he did not know why they would or would not be there today.

REP. BALYEAT asked if it is true that NCHU also applies to the drawing licenses? **Henry Warsech** said they apply to any of the three categories; 1) B10-B11, 2) all big game licenses that are not outfitter sponsored, 3) upland game, waterfowl and turkey licenses. **REP. BALYEAT** asked if the NCHU would also apply if you had a resident client? **Henry Warsech** said NCHU would also apply to a resident, and it is strictly for private land, BLM or state lands. The forest service falls under a different category. Theoretically an outfitter could take someone out of the guaranteed license pool and bring them on forest service land and not apply for the NCHU. **REP. BALYEAT** asked if there are also restrictions on the number of days you can take clients on the forest service? **Henry Warsech** said that is correct.

REP. BALES asked for an explanation of what it takes to expand or get an NCHU; the process and the cost. **Henry Warsech** said they have not had anyone go through the expansion since SB 334. It is a fee of \$2000, non-refundable. They submit a package, which is reviewed, then it is forwarded to Fish & Game for review and study. Then it is sent to a subcommittee of the Board for review, for public comment, then recommendations to the full Board of Outfitters. A fee of \$500 is assessed per client if it is approved. **REP. BALES** asked if there are some inactive outfitters that have NCHU? **Henry Warsech** said that is correct; some outfitters have inactive status but currently have NCHU assigned to them.

REP. GOLIE asked how many newly licenses outfitters this Bill would affect? **Henry Warsech** said possibly 28.

REP. FACEY asked how the outfitting business works? Do you do any advertising? **P. K. Williams** answered yes. **REP. FACEY** said, he would like an example. If someone in Pennsylvania sees the ad, calls and wants to go hunting; what would the person who lives in Pennsylvania do to get a license? **P. K. Williams** said he asks what the person wants to hunt. If they say elk and deer combination, he explains that Montana has an outfitter sponsored guaranteed tag which is \$975 this year for a B10 tag. In category (2) there is a draw tag that costs \$478. **REP. FACEY** asked how he would get a B10 license? **P. K. Williams** said in his outfitting business he has so many guaranteed B10 tags. The base of the business that he bought has 23. In the expansion Mr. Miller put in for seven more, so he actually has a total of 30 guaranteed B10 tags. He explains this to the client, and the client mails him a deposit. A Montana application and the certificate with Williams' name on it for the guaranteed B10 tag cannot be sent until the client's deposit is received. **REP. FACEY** asked if there was a strong connection between the NCHU and the guaranteed tag? **P. K. Williams** said yes. Each business has a different amount of NCHU. They have 23 B10 tags in category (1), five tags in category (2), and in category (3) they have 25 upland bird and 25 waterfowl. Those were in the expansion. It will depend on what was established as your base or what you put in for in your expansion.

CHAIRMAN FUCHS asked if money was borrowed based on the expansion that had been granted to Mr. Miller when the business was purchased? **P. K. Williams** said they got a loan from the bank when they bought the business in October 1997. What they got with the business was equipment - tents, saddles, trailer. Also have a forest service permit, but that wasn't guaranteed because they had to go before the forest service, fill out their paperwork, get approved. They have good standing with the forest service. The NCHU was just for hunting on private ground. On the forest service, you go by day use. They have so much day use for summer trips; so much day use for archery hunting on the forest. With the numbers Mr. Miller had when he was selling his business, which included his base which had been established, and the expansion which was approved in December 1996, he and his wife felt they had adequate numbers to grow to. They knew it would take time, because it was a new business. Mr. Miller had not been advertising. They were starting over, new name, new people. **CHAIRMAN FUCHS** said when you went to the bank and made your proposal to them, did you base your proposal on the expansion with the seven additional licenses, plus the upland? **P. K. Williams** said yes, that was included in the proposal.

REP. BALYEAT said there is conflicting information; one of the outfitters said this Bill could affect as many as 108 outfitters;

then you said 28. Which is correct? **Henry Worsch** said there are 28 new outfitters that would be affected by it. 108 got expansions: out of the 108, 28 were new outfitters.

REP. BALES said he is directly affected by this legislation. In 1996 he put in for an expansion of his outfitting business from 24 deer licenses to 10 extra deer licenses in the B11 category, and 46 upland bird licenses. A year later, he took 34 deer hunters out, so fulfilled the requirement of use it or lose it. On the bird side of the expansion, he did not use those. His expansion for the deer was approved. The expansion for the upland game birds was denied because he had not used it, did not have records. Outfitter must turn in their application for a new license each year before Jan 1, complete records of everyone they have taken as a client that previous year including whatever licenses you served those clients with. He has not taken any just strictly for upland game birds, so he has lost it. Under this Bill, he would be able to go ahead until December 31, 2004, and he would be able to book in bird clients up to his proposed expansion of NCHU. It will not affect him a lot either way, and he probably will not take enough clients to do birds. Those 108 are in the same boat he is in; some have taken sufficient clients to go up to the NCHU, and some have not.

Closing by Sponsor:

REP. ESP said he wants to address the fairness issue, of how long you have to prove up on your expansion, and the fairness of making a law in 1999 that is retroactive to 1996. To clarify that in the future you have five seasons to use or lose any expansion that has been granted to you sounds very fair. Outfitters are just asking for the chance to compete for this number of clients, but would not necessarily be guaranteed that number. Reads E Mail from someone in Livingston: "This Bill is vitally important to us. It means the difference between being in business and being out of business. Please consider the smaller businesses, not just the big ones. Thanks."

EXECUTIVE ACTION ON HB 481

Motion: **REP. GALLUS** moved that **HB 481 DO PASS.**

Motion: **REP. ROME** moved that **HB 481 BE TABLED.**

Discussion:

REP. GALLUS said what the Commission did last week took care of what HB 481 was going to do. The moratorium on the Big Hole and Beaverhead is still in place. It is not necessary.

Motion/Vote: REP. ROME moved that HB 481 BE TABLED. Motion carried 19-1 with Gallus voting no.

EXECUTIVE ACTION ON HB 569

Motion: REP. RIPLEY moved that HB 569 DO PASS.

Discussion:

CHAIRMAN FUCHS said he is in favor of HB 569. This was the part of SB 338 last session where if you've ever been in business and had the legislature pull the rug out from under you by changing the rules on you in the middle of the game, that is exactly what we did last session to these people. He thought it was wrong at the time, and still thinks it is wrong. HB 569 should be passed.

REP. FACEY said he supports the Bill. Be ready for some good discussion and provide definitions so those other misinformed people know what we are talking about.

REP. JENT said he supports the Bill. He has been through this before when he represented MOGA on the Gallatin. It has to do with the predictability of outfitters being able to know how many clients they will have. It also has a lot to do with the responsibilities of the Board and knowing how they are going to manage NCHU and the total number of days. To get any sort of resolution as to how much use we have, we need this Bill. It is a fairness Bill for the outfitters.

Motion/Vote: REP. GALLUS moved that HB 569 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 264

CHAIRMAN FUCHS said in the interest of saving time, he would allow the sponsor to move the HB 264 off the Table in its original form. We can put Amendments back on later.

Motion: REP. BALLYEAT moved that HB 264 BE REMOVED FROM THE TABLE IN ITS ORIGINAL FORM WITHOUT THE AMENDMENTS.

REP. BALLYEAT said he has copies of the Bill and copies of the Amendments that were attached to it. HB 264 as presented by REP. DAVE LEWIS would put constitutional recognition of our Montana hunting heritage before the people. Many were for it; then we got bogged down adding a lot of Amendments, and a motion was made to Table it. Since then, there has been a lot of feedback from constituents urging them to take it from the Table, including the NRA. Recommend DO PASS on HB 264.

Motion: REP. BALLYEAT moved that HB 264 BE REMOVED FROM THE TABLE IN ITS ORIGINAL FORM. Motion failed 7-13 with Gutsche, Barrett, Facey, Bales, Jent, Clark, Fritz, Ripley, Rice, Gallus, Thomas, Devlin and Golie voting no.

End Executive Action on HB 264.

EXECUTIVE ACTION ON HB 492

Motion: REP. CLARK moved that HB 492 BE REMOVED FROM THE TABLE and DO PASS. Motion passed 17-3 with Balyeat, Shockley, and Rice voting no.

Motion: REP. BALES moved that HB 492 DO PASS.

Motion: REP. BALES moved AMENDMENT 49203 TO HB 492 BE ADOPTED.

Discussion:

Legislative Staffer Doug Sternberg explained AMENDMENT 49203, **EXHIBIT (fih40a01)**. The effect of the changes on Page 3, lines 4-5, would be to include the department of natural resources and conservation as an agency that would be allowed management and control as long as it is consistent with the overall management plan. The final change is on Page 3, line 6 following the word "agriculture". The new sentence states "Nothing in this part may be interpreted to limit a landowner's ability to control prairie dog concentrations in unacceptable locations on private lands".

REP. BALES said that even though we do pass this, in the Department of Agriculture, the prairie dog will still be listed as a rodent and control will be allowed. What this amendment does is give the landowner the authority to control the prairie dogs on his property. There are already restrictions on controlling prairie dogs on BLM land, so in HB 492, we are also insuring that the private landowner will have the ability to control prairie dogs on his private property.

Substitute Motion: REP. THOMAS made a substitute motion that AMENDMENT 49203 TO HB 492 BE ADOPTED.

REP. THOMAS said he would like to change the word "unacceptable" in the Amendment. After the word "locations", he would insert "as determined by the landowner". This would give the landowner complete control of the decision as to what is unacceptable, and not leave that open to an outside entity.

REP. SHOCKLEY called for a vote on the substitute amendment.

REP. CLARK said he will support this, it is a simple clarification that is okay.

Substitute Motion/Vote: REP. SHOCKLEY made a substitute motion that REP. THOMAS' AMENDMENT TO AMENDMENT 14203 ON HB 492 BE ADOPTED. Substitute motion carried 19-1 with Balyeat voting no.

Motion/Vote: REP. BALES moved that AMENDMENT 49203 TO HB 492 DO PASS. Motion carried unanimously.

Motion: REP. SHOCKLEY moved that HB 492 DO PASS AS AMENDED.

REP. BALES said he has another Amendment. Legislative Staffer Doug Sternberg explains Amendment 49202, EXHIBIT(fih40a02), which adds reference to FWP "and the Department of Agriculture" on Page 1, line 30 to implement management actions. Page 2, line 27, following the word "improvement", insert "control". Page 3, line 2, following the word "managed", insert "controlled".

Motion/Vote: REP. BALES moved that AMENDMENT 49202 TO HB 492 BE ADOPTED. Motion carried 17-3 with Gallus, Gutsche and Fuchs voting no.

Motion: REP. SHOCKLEY moved that HB 492 DO PASS AS AMENDED.

Discussion:

REP. BALES said the endangered species act is not necessarily being used to protect animals that are in danger of becoming extinct. It is being used for land management. We are in a chess game on this, and this is just one move in the chess game. Agrees this is ludicrous, but it is the game we play, and asks for the Committee's support.

REP. BALYEAT said REP. BALES brought up the issue of threat of prairie dogs being listed as the only reason he wants us to support this Bill. He reads a portion of a letter from Gary Marbut with Montana Shooting Sports Association. "Spoke with Attorney with the Mountain States Legal Foundation in Denver about prairie dogs. Interior Secretary Gail Norton used to work at Mountain States Legal Foundation and they have been more active than any other legal authority in litigation over the endangered species act. The Mountain States Legal Foundation Attorney agreed there is no way the U.S. Forest Service could sustain a legal challenge against their listing as endangered under the endangered species act of a species that numbers 10 million in existence in the U.S. He also agrees that the reason the U.S. Forest Service did not list prairie dogs is not for the stated reason that they have higher priorities, but because a

decision on their part to list prairie dogs as endangered, wouldn't hold up under its first day in court in a legal challenge. Thus the whole drive to manage prairie dogs to avoid federal listing is a bluff." **REP. BALLYEAT** said he agrees; we are being bluffed into passing this Bill. Doesn't think we should pass it based on either a bluff or a threat. Will vote against.

REP. GALLUS said that would be two votes against it.

Motion/Vote: **REP. GALLUS** moved that **HB 492 DO PASS AS AMENDED**.
Motion carried 13-7 with Ballyeat, Devlin, Fuchs, Gallus, Laszloffy, Rice, and Shockley voting no.

End Executive Action on HB 492.

EXECUTIVE ACTION ON HB 388

REP. GOLIE requested that **HB 388 BE REMOVED FROM THE TABLE and DO PASS**.

REP. GOLIE said HB 388 would take social security numbers off hunting and fishing licenses and conservation licenses if we get the waiver from the Federal Government. The Bill makes it official misconduct for a public employee to use our social security number in any way. If a vendor that sells hunting and fishing licenses has our social security number and gives it out or sells it that will be a crime. Those of us who have already used our social security numbers, currently FWP has them in a database and they can keep it for five years. This Bill knocks it down to two years.

Motion: **REP. GOLIE** moved that **HB 388 BE REMOVED FROM THE TABLE**.
Motion tied 10-10 with Ballyeat, Laszloffy, Barrett, Bales, Steinbeisser, Ripley, Rice, Rome, Thomas and Fuchs voting No.

End Executive Action on HB 388.

EXECUTIVE ACTION ON HB 520

Motion: **REP. GALLUS** moved that **HB 520 BE RECONSIDERED**.

Discussion:

REP. GALLUS said HB 520 would authorize the trustees of the school district to provide up to three days of release time from school for hunter safety education or participating in a hunting activity. We are not saying every school district has to do this, all we are saying is if a group of trustees on a local

level want to get together and allow this program in their school district, they can do it.

REP. BALES said there are already school districts in Montana that allow one or more days off for hunting. They already have this authority. If we pass this, we are taking it away from local control and making a strong suggestion that they allow it.

REP. GALLUS said that is an inaccurate statement. Line 4 of the Bill says "An act authorizing the trustees of a school district to provide a student hunter.....". HB 520 is just giving them the right to do it. That is not forcing it upon them.

REP. FACEY said if school districts have the right to do it now, this Bill won't change a thing. It's just a feel good Bill, and it's currently on the books.

REP. BARRETT says she doesn't like it because the sponsor rejected an Amendment to include anything except his favorite heritage.

REP. RIPLEY said he agreed with **REP. FACEY**. It is a do nothing Bill. School districts have the authority to do it now and they are doing it.

REP. GALLUS asked where it is in the statute that they have the right to do that already? **Legislative Staffer Doug Sternberg** said that Article 10, Section 8 of the Montana Constitution says: "Supervision and control of schools in each district shall be vested in a board of trustees to be elected as provided by law." The legislature in this case can certainly make a suggestion, a statement of how the legislature would like to see the local board use its control, but the oversight of the schools lies with local control. That is why this Bill uses discretionary language rather than mandatory.

Motion: **REP. GALLUS** moved that **HB 520 BE RECONSIDERED**. Motion failed 9-11 with Gutsche, Barrett, Facey, Bales, Steinbeisser, Tramelli, Fritz, Ripley, Rice, Thomas, and Devlin voting No.

Motion/Vote: **REP. SHOCKLEY** moved that **HB 520 BE TABLED**. Motion carried 11-9 with Balyeat, Laszloffy, Shockley, Jent, Clark, Gallus, Rome, Golie, and Fuchs voting no.

ADJOURNMENT

Adjournment: 2:20 P.M.

REP. DANIEL FUCHS, Chairman

LINDA KEIM, Secretary

DF/LK

EXHIBIT(fih40aad)